

THE STATE OF ARIZONA  
CITIZENS CLEAN ELECTIONS COMMISSION

REPORTER'S TRANSCRIPT OF PUBLIC MEETING

Phoenix, Arizona

April 27, 2006

9:30 a.m.

(Original)

Reported By:

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Certified Reporter (AZ 50127)

Draft Copy

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1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN  
 2 ELECTIONS COMMISSION, convened at 9:30 a.m. on April 27,  
 3 2006, at the State of Arizona, Clean Elections  
 4 Commission, 1616 W. Adams, Conference Room, Phoenix,  
 5 Arizona, in the presence of the following Board members:  
 6 Ms. Marcia Busching, Phoenix, Chairperson  
 7 Mr. Gary Scaramazzo, Page, Teleconference  
 8 Ms. Ermila Jolley, Yuma  
 9 Mr. Carl Kunasek, Maricopa  
 10 Ms. Royann J. Parker, Pima  
 11  
 12 OTHERS PRESENT:  
 13 Mr. Todd Lang, Executive Director  
 14 Ms. Paula Ortiz, Executive Assistant  
 15 Ms. Colleen McGee, Fiscal Service Manager  
 16 Mr. Michael Becker, Voter Education Manager  
 17 Ms. Christina Murphy, Administrative Assistant  
 18 III  
 19 Mr. Daniel Ruiz II, Citizen  
 20 Ms. Diana Varela, Assistant Attorney General  
 21 Ms. Barbara Lubin, Clean Elections Institute  
 22 Ms. Lauren Lowe, Perkins Coie Brown & Bain  
 23 Ms. Jan Brewer, Secretary of State  
 24 Ms. Nancy Read, Secretary of State's Office  
 25 Mr. Mike Brewer, Citizen  
 Ms. Barbara Klein, Arizona League of Women  
 Voters  
 Mr. Lee Miller, Miller, LaSota & Peters

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1 COMMISSIONER JOLLEY: Yes, I just have one  
 2 correction which is on page eight where it says -- we're  
 3 speaking about the debate sponsorship in outlying areas  
 4 like Mojave County and then there's a word inserted  
 5 here, "Hutchinson County." And since we do not have a  
 6 Hutchinson County, I think maybe it's meant to be  
 7 Coconino County.  
 8 CHAIRPERSON BUSCHING: Okay. Sounds fine. Any  
 9 other additions or corrections?  
 10 If not, the Chair will entertain a  
 11 motion.  
 12 COMMISSIONER KUNASEK: So moved.  
 13 COMMISSIONER SCARAMAZZO: Second.  
 14 CHAIRPERSON BUSCHING: It's been moved by  
 15 Commissioner --  
 16 COMMISSIONER KUNASEK: Kunasek.  
 17 CHAIRPERSON BUSCHING: -- Kunasek and seconded  
 18 by Commissioner Scaramazzo that we approve the minutes  
 19 as amended. All in favor say, "aye."  
 20 (Chorus of ayes.)  
 21 CHAIRPERSON BUSCHING: Opposed, nay? Chair  
 22 votes aye. Motion carries.  
 23 And I note for the record that all  
 24 Commissioners are present either by -- in presence or by  
 25 telephone.

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1 P R O C E E D I N G  
 2  
 3 CHAIRPERSON BUSCHING: Good morning, everyone.  
 4 I want to welcome everyone. This is the Citizens Clean  
 5 Elections Commission. We're at 1616 West Adams, Suite  
 6 110, Phoenix, Arizona. It's Thursday, April 27th, 2006  
 7 at 9:30 in the morning.  
 8 Pursuant to ARS 38-431.02, notice is hereby  
 9 given that this meeting is open to the public and that  
 10 at any time the Commission may vote to go into executive  
 11 session which will not be open to the public for any  
 12 item listed on the agenda for obtaining legal advice.  
 13 All matters on the agenda may be discussed, considered,  
 14 and are subject to action by the Commission.  
 15 I've called the meeting to order, so we'll turn  
 16 to Item No. II, which is to welcome our new  
 17 commissioner, Royann Jordan Parker. Welcome to the  
 18 Commission.  
 19 COMMISSIONER PARKER: Thank you. It's good to  
 20 be here.  
 21 CHAIRPERSON BUSCHING: Good. Thank you.  
 22 Item No. III, approval of the March 30th,  
 23 2006 Commission meeting minutes which are in your  
 24 packet. Are there any changes or corrections?  
 25 Commissioner Jolley?

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1 Item No. IV, Executive Director's report.  
 2 MR. LANG: Thank you, Madame Chair,  
 3 Commissioners. Good morning. Welcome, Commissioner  
 4 Parker.  
 5 I have made -- we're pleased to announce a new  
 6 member of our staff. We've hired a new campaign finance  
 7 manager. His name is Daniel Ruiz. Would you stand up  
 8 and say hi to the Commission.  
 9 He spent the last almost four years working for  
 10 the County doing election enforcement there. And I have  
 11 to tell you, it was a nice experience. All the folks I  
 12 interviewed, all of them were absolutely qualified for  
 13 the job and would have done a great job. So it was a --  
 14 was a good problem to have. We look forward to working  
 15 with him. He'll be starting in two weeks and we're  
 16 excited about that.  
 17 Let's see, you see the update on the  
 18 legislations. No new news there. Both Diana and I are  
 19 doing continuing legal education tomorrow as presenters  
 20 and instructors tomorrow on election law issues. I'm  
 21 doing mine on election law issues. You're doing yours  
 22 on --  
 23 MS. VARELA: Voting Rights Act.  
 24 MR. LANG: -- Voting Rights Act. So there you  
 25 go and that will be fun.

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1 As you see, we now have a hundred -- I don't  
2 know what your update says, but we now have 151  
3 participating candidates for the election cycle. Of  
4 course, this will change as folks update their  
5 committees but that's up well over 60 percent  
6 participation. So -- and we've funded 12 candidates as  
7 you see and on the road to funding several more. So  
8 everything is starting to get in gear.

9 We're still working on the debate sponsors.  
10 We've added a new one, LULAC. We're working on others.  
11 We're reaching out to the community in those areas.  
12 It's been a bit of a challenge. We've had a couple  
13 groups back -- or one group back out. And so we're  
14 quite confident we'll have the debate sponsors we need,  
15 but we want to get, obviously, the best folks to do it.  
16 And we've asked some very qualified folks to do it and  
17 still considering it.

18 You probably read a couple editorials. We've  
19 started doing more editorials. Michael and I are  
20 primarily working on those along with the folks at our  
21 consulting firm and so that seems to be going well.

22 Enforcement. Obviously, the big news is we're  
23 starting to get 2006 complaints. We've received two  
24 this week and we're waiting for a response on the  
25 Napolitano Campaign on theirs. And the other complaint,

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1 the complaint was not notarized, so we had to send it  
2 back and we'll wait to see if it's re-filed. And we  
3 anticipate that it's time, we are going to be getting a  
4 lot of complaints now.

5 And that concludes my report unless you have  
6 questions.

7 COMMISSIONER KUNASEK: I noted the one that was  
8 sent back for failure to have it notarized, is there a  
9 restriction or a time limit on resubmitting that?  
10 Getting it notarized and resubmitting it?

11 MR. LANG: Commissioner Kunasek, no. There's  
12 no restriction. They can wait and file a month from now  
13 if they wanted. Of course, we can always do an  
14 internally-generated complaint as well if we felt there  
15 was merit, but we'll wait to hear back.

16 In fact, actually, technically, the complaint  
17 against the Napolitano Campaign also lacked the  
18 notarization. And we gave them notification of that and  
19 they resubmitted it with the proper notarization.

20 CHAIRPERSON BUSCHING: Commissioner Parker?

21 COMMISSIONER PARKER: How long does the  
22 Napolitano Campaign have to get the answer back to you  
23 so we know what we're going to be doing on that.

24 MR. LANG: Well, they have five days and that's  
25 business days from the date of receipt. So, assuming

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1 they received it either yesterday -- probably either  
2 yesterday or today, they'll have until some time next  
3 week Tuesday or Wednesday depending on -- and we, of  
4 course, the way we send it out we will have notification  
5 when they received it, but it will be sometime next  
6 week.

7 COMMISSIONER PARKER: Thank you.

8 CHAIRPERSON BUSCHING: Do you want to take a  
9 couple of minutes and explain what happens after that?

10 MR. LANG: Once I receive their response, I  
11 then, obviously, review it and then I make a  
12 recommendation to the Commission. Either I'll recommend  
13 that no action be taken because I feel based on my  
14 determination based on my analysis that there's been no  
15 violation, or I'll recommend either a penalty or in some  
16 case we've even had pro-active candidates come to us and  
17 try to resolve the case.

18 So, I'll either come with a recommended penalty  
19 -- or not a recommended penalty, but a recommendation  
20 the Commission find reason to believe there's been a  
21 violation or even at that early stage recommend a  
22 settlement. If the Commission agrees with me and finds  
23 a reason to believe there's been a violation, then we  
24 proceed with further investigation if necessary. And  
25 there's a further opportunity to discuss the issues.

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1 And then, ultimately, assuming we're not able  
2 to either settle it or resolve it otherwise, we'll come  
3 back to the Commission with a final recommendation that  
4 there's been a violation and at that time the Commission  
5 will assess a penalty if -- if the Commission deems it  
6 appropriate.

7 COMMISSIONER PARKER: Do we have the  
8 opportunity to review the documentation that you use for  
9 your review?

10 MR. LANG: Well, as part of the formal process  
11 when I make that recommendation at the next meeting,  
12 sure, you'll have everything. You will have their  
13 response -- you will have the complaint, of course,  
14 their response and any other documentation we receive.  
15 You'll have everything.

16 CHAIRPERSON BUSCHING: And after you get into  
17 the investigative stage after we found reason to believe  
18 a violation has occurred on any given complaint, then  
19 there's also an opportunity for staff or the attorney  
20 general to issue subpoenas, take depositions, you know,  
21 get further documents, you know, go into a full  
22 investigation, you know, and then bring the results from  
23 that to the Commission.

24 COMMISSIONER PARKER: Okay.

25 MR. LANG: In those cases, just as a matter of

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1 background, where we have to do that more thorough  
 2 investigation and have to hire auditors, do an internal  
 3 audit -- which is one option you have -- where we have  
 4 to hire investigators or do it ourselves, or do  
 5 subpoenas, obviously, that takes more time and that will  
 6 slow the process down.  
 7 COMMISSIONER KUNASEK: The auditors that are  
 8 hired are on a competitive basis or list of preferred  
 9 auditors?  
 10 MR. LANG: We have a contract that we send out  
 11 for bid.  
 12 COMMISSIONER KUNASEK: Contract. Okay.  
 13 MR. LANG: We have one under contract.  
 14 COMMISSIONER KUNASEK: You have one under  
 15 contract now?  
 16 CHAIRPERSON BUSCHING: Yes.  
 17 COMMISSIONER JOLLEY: Two.  
 18 MR. LANG: One for the random audits and the  
 19 one for audits through enforcement. Thanks.  
 20 CHAIRPERSON BUSCHING: Any other questions on  
 21 the Executive Director's report?  
 22 Okay. Item No. V, discussion and possible  
 23 action on removing substantive policy statement number  
 24 12, allocation of campaign expenses between campaign and  
 25 non-campaign-related travel. Mr. Lang?

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1 MR. LANG: Thank you, Madame Chair,  
 2 Commissioners. As you know, in the last meeting, you  
 3 adopted a new substantive policy statement number 11  
 4 which was comprehensive and incorporated the original  
 5 number 11, the original number 12, and the original  
 6 number 13. And because of public meeting requirements  
 7 we couldn't repeal 12. We did repeal 13 because it was  
 8 on the agenda, but we couldn't repeal 12 even though  
 9 it's now redundant.  
 10 And we have it on the meeting today with the  
 11 recommendation you repeal because the issues that it  
 12 addresses is now incorporated into the new number 11.  
 13 CHAIRPERSON BUSCHING: Okay. Any questions or  
 14 comments for Mr. Lang?  
 15 Anyone from the public wishes to speak to this  
 16 matter? If you would state your name and come forward,  
 17 please.  
 18 MS. LUBIN: Barbara Lubin with the Clean  
 19 Elections Institute. It really doesn't matter to me the  
 20 organization of this matter, but I did have a question  
 21 regarding some of the substance. And I know you can't  
 22 act on it now but I thought it was more appropriate to  
 23 bring it up now as opposed to public comment since  
 24 that's what we're doing.  
 25 Number E, the log/timely reports. I wanted

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1 clarification, if possible. Does this log apply to all  
 2 travel or just travel by airplane regarding the log?  
 3 Because --  
 4 CHAIRPERSON BUSCHING: I think the discussion  
 5 certainly focused on it applying to all travel.  
 6 MS. LUBIN: Okay. Well, in that instance, I  
 7 know you can't do anything now, but I really ask you to  
 8 carefully look at this -- and, does it apply to all  
 9 candidates or just participating Clean Elections'  
 10 candidates?  
 11 CHAIRPERSON BUSCHING: And that I think is a  
 12 question --  
 13 MR. LANG: Generally substantive policy  
 14 statements apply to all candidates.  
 15 MS. LUBIN: Well, I -- I really think that,  
 16 once again, you've got the problem here -- you all as a  
 17 Commission are trying to make sure that things are done  
 18 fairly and no one cheats. But on the other hand,  
 19 sometimes in the process of trying to make sure that  
 20 folks don't cheat and take advantage of the system or  
 21 get an unfair advantage on their opponents, I really  
 22 think this policy just goes too far and requires too  
 23 much detail for the candidates to keep.  
 24 I just can't imagine a candidate when they're  
 25 going to every single event having to write down what

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1 the odometer reading is, who's going with them, what the  
 2 requirement is. And I just really think that even  
 3 though it was well-intentioned, it may well have gone  
 4 too far.  
 5 And then it was -- and I didn't bring this up  
 6 at the last meeting because it was just -- I didn't even  
 7 see this policy statement until the meeting was halfway  
 8 through because I had -- I pulled down the documents the  
 9 day before when it wasn't posted.  
 10 And then the other thing I would like to point  
 11 out too that I was concerned with is that it talks about  
 12 if you're using a state vehicle. If using a state  
 13 vehicle, you have to go with the state reimbursement  
 14 amount of 40-something cents. And I would just really  
 15 hope that you would possibly examine that too, because  
 16 that 40-something cents is established if an employee of  
 17 the state is using their own private vehicle for which  
 18 they have depreciation standards, they have their own  
 19 insurance policy. It's -- it is not based on what the  
 20 cost of driving a state vehicle is per mile. And I  
 21 think it's got to be totally different than a personal  
 22 vehicle because they buy it at fleet rates, they get  
 23 insurance at fleet rates, and it's got to be less. So I  
 24 would really like some examination of that.  
 25 And we were looking over some campaign finance

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1 reports in the past and Senator Karen Johnson, it's on  
 2 her campaign finance report that she rented a state van  
 3 and paid for it with campaign money to go down and  
 4 observe the Minutemen activity at the border. Okay? So  
 5 she did that, which is, I guess, legal. I don't really  
 6 care. But whatever rate she paid was what she had to  
 7 reimburse the state. And that doesn't necessarily  
 8 coincide with the 40.5 cents per mile or whatever.

9 I mean, I've been at forums in Flagstaff when  
 10 the State Mine Inspector, Doug Martin, shows up to a  
 11 campaign event driving his state pickup truck that says  
 12 "State Mine Inspector" on the side. And I suppose that  
 13 maybe that's justified because in his area of  
 14 responsibility if there was some mine accident, he would  
 15 have to immediately show up.

16 What happens if we have an attorney general  
 17 such as when Bruce Babbitt were investigating some of  
 18 the land fraud people and there were threats against his  
 19 life and he has to go in a state vehicle, or, you know,  
 20 there's a variety of things.

21 So, I would just really ask you to look and see  
 22 if that's the required reimbursement rate when you go in  
 23 a state vehicle matches what the real cost is of that  
 24 vehicle, because I have a feeling it's different. And I  
 25 really think that asking people every time they take a

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1 trip, whether it be all the way down to Yuma or up to  
 2 Page or across the street to a campaign forum, of having  
 3 to keep a log like this, I think it's very onerous and I  
 4 think that it's going to be real negative by candidates  
 5 in their view of this law.

6 CHAIRPERSON BUSCHING: Thank you.

7 MS. LUBIN: Thank you.

8 CHAIRPERSON BUSCHING: Any other members of the  
 9 public wish to speak?

10 Okay. Mr. Lang, could you clarify once again,  
 11 the only thing that's on the agenda for today is to  
 12 delete the item number 12?

13 MR. LANG: That's right.

14 CHAIRPERSON BUSCHING: Okay.

15 MR. LANG: So we can't consider her proposal.

16 CHAIRPERSON BUSCHING: Okay. If you would, you  
 17 know, take it under consideration and, you know, decide  
 18 whether it should be brought up in another Commission  
 19 meeting it would be appreciated.

20 MR. LANG: Okay.

21 CHAIRPERSON BUSCHING: Is there any comments or  
 22 questions by the members of the Commission?

23 COMMISSIONER KUNASEK: Any other public  
 24 comments?

25 CHAIRPERSON BUSCHING: I didn't see any.

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1 COMMISSIONER KUNASEK: Okay.

2 CHAIRPERSON BUSCHING: Commissioner Parker?

3 COMMISSIONER PARKER: So you're saying that all  
 4 the verbiage that's on E)12(A) and (B) and 13, 14 are  
 5 all now in one policy?

6 CHAIRPERSON BUSCHING: No. Everything that's  
 7 in 12 is now in one policy. Unfortunately, we didn't  
 8 get 11 which shows the duplication.

9 Mr. Lang, do you have it there?

10 MR. LANG: This is substantive policy statement  
 11 11, the new one --

12 COMMISSIONER PARKER: Okay.

13 MR. LANG: -- and it incorporates 12 in it.

14 And if you review it --

15 COMMISSIONER PARKER: Okay.

16 MR. LANG: -- what 12 does is it tells you how  
 17 to allocate between campaign and non-campaign purposes  
 18 and this also addresses that as well.

19 COMMISSIONER PARKER: They didn't change the  
 20 way that they did it?

21 MR. LANG: The substance didn't change but the  
 22 language changed.

23 CHAIRPERSON BUSCHING: The language didn't  
 24 change I don't think.

25 MR. LANG: Didn't we correct a few typos?

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1 CHAIRPERSON BUSCHING: Yeah, minor stuff.

2 COMMISSIONER PARKER: All right. Thanks.

3 COMMISSIONER KUNASEK: Did you supply the  
 4 Commissioners with this revised incorporated booklet or  
 5 did I overlook that?

6 MR. LANG: You should all have copies of the  
 7 book.

8 CHAIRPERSON BUSCHING: Uh-uh, we didn't get it.  
 9 We haven't gotten a revised book at all.

10 MR. LANG: Okay. Well, you should have one so  
 11 we'll take care of that.

12 CHAIRPERSON BUSCHING: Yeah, if after today's  
 13 meeting we could get it with whatever we decide, that  
 14 will be helpful.

15 Okay. Any other questions or comments? If  
 16 not, the Chair will entertain a motion. Commissioner  
 17 Kunasek?

18 COMMISSIONER KUNASEK: In view of the fact that  
 19 we didn't get it, I would make a motion with the  
 20 reservation that, if upon review it appears that there  
 21 was something else not included, then I would -- my  
 22 motion -- my motion would include we could revisit it --

23 CHAIRPERSON BUSCHING: Of course.

24 COMMISSIONER KUNASEK: -- if it was determined  
 25 by one of the Commissioners something was inadvertently

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1 left out.  
 2 CHAIRPERSON BUSCHING: Okay. Is there a  
 3 second?  
 4 COMMISSIONER PARKER: I'll second.  
 5 CHAIRPERSON BUSCHING: Okay. It's been moved  
 6 by Commissioner Kunasek and seconded by Commissioner  
 7 Parker that we remove substantive policy statement  
 8 number 12, subject to a review after the fact and  
 9 possible revisiting of the issue should it be determined  
 10 that it is not entirely duplicative of substantive  
 11 statement policy number 11.  
 12 Does that meet with the Attorney General's  
 13 approval? Okay. Mr. Lang?  
 14 MR. LANG: Madame Chair, just for clarity, what  
 15 would remain then is the indication 12 would say  
 16 "reserved" and have procedural history of the rule and  
 17 that will be it.  
 18 CHAIRPERSON BUSCHING: Okay.  
 19 COMMISSIONER KUNASEK: So now we have 12 and 13  
 20 reserved?  
 21 MR. LANG: That's correct.  
 22 CHAIRPERSON BUSCHING: All right. Any further  
 23 discussion?  
 24 COMMISSIONER PARKER: I have one question.  
 25 CHAIRPERSON BUSCHING: Sure.

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1 COMMISSIONER PARKER: When the Commission looks  
 2 at these policies, I know that they did some changes in  
 3 like the airplane-travel thing, is there a way to review  
 4 those changes again or --  
 5 CHAIRPERSON BUSCHING: Of course. I mean,  
 6 they're always subject to review.  
 7 COMMISSIONER PARKER: Okay.  
 8 CHAIRPERSON BUSCHING: Yeah. Yeah, the  
 9 question is, when is it appropriate to do it --  
 10 COMMISSIONER PARKER: Right.  
 11 CHAIRPERSON BUSCHING: -- and is there  
 12 something that should be done to it. But as a  
 13 Commission, we're the ones that pass the rules and the  
 14 substantive policy statements. And although they're  
 15 subject to pre-clearance by the Department of Justice,  
 16 as long as they pass the blessing of our AG and the  
 17 Department of Justice, we can change them whenever it's  
 18 appropriate.  
 19 And certainly things factor into that like, you  
 20 know, will people be able to be informed of the changes  
 21 in time to act upon them, is it -- is it fair to the  
 22 public, is it fair to the candidates, that kind of  
 23 thing. All of which we need to weigh in the context of  
 24 whatever we're talking about changing.  
 25 COMMISSIONER PARKER: Okay. Thank you.

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1 CHAIRPERSON BUSCHING: Yep. Okay. Any further  
 2 questions or discussion?  
 3 If not, the Chair will call for the question,  
 4 all in favor of removing substantive policy statement  
 5 number 12 and inserting "reserved" in its place say  
 6 "aye."  
 7 (Chorus of ayes.)  
 8 CHAIRPERSON BUSCHING: Opposed, nay?  
 9 Chair votes aye. Motion carries.  
 10 Item No. VI, consideration and possible action  
 11 on designating one-party dominant legislative districts.  
 12 Mr. Lang?  
 13 MR. LANG: Actually, Madame Chair,  
 14 Commissioners, Colleen McGee is here to help you through  
 15 this process. She's our fiscal services manager.  
 16 MS. MCGEE: Good morning, Commissioners.  
 17 You're all in receipt of the memo regarding our  
 18 calculation on the one-party dominant districts. As  
 19 you're aware, 16-952 allows participating candidates who  
 20 are running in a party dominant district to reallocate  
 21 their funds from the general so they get the larger  
 22 amount in the primary.  
 23 And we need to come up with -- with our  
 24 determination of the one-party dominant districts. And  
 25 you have all the calculations that are attached to my

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1 memo. We based the calculations on the voter  
 2 registration list that we received from the Secretary of  
 3 State's office on March 1st.  
 4 If you have any questions, I'll be glad to  
 5 answer to them.  
 6 COMMISSIONER KUNASEK: Any weight given to  
 7 those who voted in the last primary election?  
 8 MS. MCGEE: It's all based on voter  
 9 registration.  
 10 COMMISSIONER KUNASEK: All based --  
 11 MS. MCGEE: Uh-huh.  
 12 CHAIRPERSON BUSCHING: Okay.  
 13 COMMISSIONER KUNASEK: Without going through it  
 14 all, how many legislative districts in the state are  
 15 one-party dominant?  
 16 MS. MCGEE: We have all but four now. So 26  
 17 districts that are one-party dominant.  
 18 COMMISSIONER KUNASEK: 26.  
 19 MS. MCGEE: That's correct.  
 20 CHAIRPERSON BUSCHING: Any other questions for  
 21 Ms. McGee? Commissioner Jolley?  
 22 COMMISSIONER JOLLEY: Yes, I just have a  
 23 question. When it says, "no party," is that because  
 24 it's evenly split or there's more independent registered  
 25 voters?

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1 MS. MCGEE: There's just not a dominant party  
 2 in those registered districts.  
 3 CHAIRPERSON BUSCHING: Okay. Anyone from the  
 4 public that wishes to speak to this matter?  
 5 If not, the Chair will entertain a  
 6 motion. Commissioner Jolley?  
 7 COMMISSIONER JOLLEY: Yes. I will move that we  
 8 accept the one-party dominant legislative districts for  
 9 2006 as presented by staff to the Commission.  
 10 CHAIRPERSON BUSCHING: Is there a second?  
 11 COMMISSIONER KUNASEK: I have a -- I'll second  
 12 it and then a question.  
 13 CHAIRPERSON BUSCHING: All right. Commissioner  
 14 Kunasek?  
 15 COMMISSIONER KUNASEK: How is this changed from  
 16 the previous way that it is determined?  
 17 MS. MCGEE: It's the same process we use every  
 18 two years.  
 19 COMMISSIONER KUNASEK: Okay.  
 20 MS. MCGEE: It's always based on the voter  
 21 registration.  
 22 COMMISSIONER KUNASEK: So this is a revision of  
 23 election cycle annual review?  
 24 MS. MCGEE: Yes. We do it every two years  
 25 right before the election based on the voter

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1 registration list.  
 2 COMMISSIONER KUNASEK: Okay. Thank you.  
 3 MS. MCGEE: You're welcome.  
 4 CHAIRPERSON BUSCHING: Any other questions or  
 5 comments? If not -- did you have another question?  
 6 COMMISSIONER KUNASEK: No, thank you.  
 7 CHAIRPERSON BUSCHING: If not, the Chair will  
 8 call for the question, all in favor of accepting staff's  
 9 report and designating the one-party dominate  
 10 legislative districts say, "aye."  
 11 (Chorus of ayes.)  
 12 CHAIRPERSON BUSCHING: Opposed, nay?  
 13 Chair votes aye. Commissioner  
 14 Scaramazzo, are you there?  
 15 COMMISSIONER SCARAMAZZO: That was an aye.  
 16 CHAIRPERSON BUSCHING: Okay. Thank you.  
 17 Item No. 7, nomination and election of  
 18 Chair for 2006. As you may recall in January because we  
 19 had a less-than-full Commission, we voted to just enact  
 20 a Chair for the first three months. And since three  
 21 months has now passed, I asked the Executive Director to  
 22 go ahead and put this on the agenda so that we could be  
 23 official for the rest of the year. So that's where we  
 24 are at.  
 25 COMMISSIONER KUNASEK: What -- excuse me,

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1 Madame Chair. What is the cycle that we deal with in  
 2 the absence of --  
 3 CHAIRPERSON BUSCHING: Calendar year.  
 4 COMMISSIONER KUNASEK: Calendar year. Thank  
 5 you.  
 6 CHAIRPERSON BUSCHING: So what we would be  
 7 doing is electing a Chair for the remainder of 2006.  
 8 Mr. Lang, I'm correct on that, aren't I?  
 9 MR. LANG: You are correct.  
 10 CHAIRPERSON BUSCHING: Yeah, okay.  
 11 COMMISSIONER KUNASEK: And what is the process  
 12 in the event of -- that the chairman is not able to  
 13 attend physically I mean?  
 14 CHAIRPERSON BUSCHING: In the past we've had --  
 15 COMMISSIONER KUNASEK: You have a vice chairman  
 16 or --  
 17 CHAIRPERSON BUSCHING: No. Mr. Lang, do you  
 18 have any thoughts?  
 19 MR. LANG: The routine practice of the  
 20 Commission, Madame Chair and Commissioners, is simply  
 21 appoint an acting Chair for that particular meeting. It  
 22 hasn't happened very often, but when it does it's  
 23 usually fairly amicable and done as a matter of routine.  
 24 COMMISSIONER KUNASEK: I see. Okay.  
 25 CHAIRPERSON BUSCHING: Okay. Any other

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1 questions?  
 2 The floor is open. Any nominations?  
 3 COMMISSIONER SCARAMAZZO: I would nominate  
 4 Commissioner Busching to continue on in the Chair's  
 5 position for the remainder of 2006.  
 6 CHAIRPERSON BUSCHING: Thank you.  
 7 COMMISSIONER JOLLEY: I will second that.  
 8 CHAIRPERSON BUSCHING: Thank you.  
 9 Are there any other nominations?  
 10 Commissioner Parker.  
 11 COMMISSIONER PARKER: I would like to nominate  
 12 Commissioner Kunasek.  
 13 CHAIRPERSON BUSCHING: Okay. Is there a second  
 14 to that?  
 15 We have a nomination for Commissioner Busching  
 16 and nomination for Commissioner Kunasek; although we  
 17 don't have a second.  
 18 Mr. Lang, do you want to help me on this? How  
 19 should we proceed?  
 20 MR. LANG: Well, unless the AG disagrees with  
 21 me, if there's no second then it seems to be we proceed  
 22 with a vote on the initial nomination which was  
 23 seconded.  
 24 COMMISSIONER KUNASEK: Do we follow Roberts or  
 25 Masons?

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1 MR. LANG: We -- Secretary of State Brewer has  
 2 pointed that out to us before. We don't follow --  
 3 COMMISSIONER KUNASEK: Anybody?  
 4 MS. BREWER: And I did not point that out.  
 5 MR. LANG: I apologize. I thought you had. So  
 6 if you have a suggestion on how you would like to  
 7 proceed.  
 8 COMMISSIONER KUNASEK: I have -- I have no  
 9 suggestion. I'm still -- this is, what, my third  
 10 meeting? Fourth meeting?  
 11 MR. LANG: You're a veteran.  
 12 COMMISSIONER KUNASEK: I'm still learning.  
 13 It depends on whose rules you follow if  
 14 you need a second or not is my understanding of the  
 15 rules of order anyway. If it's not spelled out in  
 16 your --  
 17 MR. LANG: I'm looking at our statutes right  
 18 now.  
 19 MS. VARELA: I -- I mean, what the Commission  
 20 practice has been -- I can't speak to just the election  
 21 of the Chair, but on every other matter that the  
 22 Commission considers, it only goes to a vote when  
 23 there's been a second. So I can't speak to what rules  
 24 they follow. But since I've been representing the  
 25 Commission, I think this was the practice when Todd

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1 not -- there was a probable cause finding in this matter  
 2 and Ms. Hammann had requested a hearing which was held  
 3 on March 28th. The judge was Judge Daniel Martin and at  
 4 that time he had indicated because there was a lot of  
 5 information for him to digest and I had submitted a  
 6 brief and there were a number of exhibits that we had  
 7 gotten into the record that it might take him longer. I  
 8 think he has 20 days from the time the record closes to  
 9 make a decision. He indicated it might take a little  
 10 longer than that. At this point we're just waiting for  
 11 Judge Martin's decision. At that point -- at that point  
 12 we'll come back to the Commission for consideration of  
 13 his recommended decision and the Commission will be  
 14 represented by independent counsel for purposes of that  
 15 decision.  
 16 CHAIRPERSON BUSCHING: Commissioner Jolley?  
 17 COMMISSIONER JOLLEY: Yes, I have a question.  
 18 First of all, was Ms. Hammann, was she present at the  
 19 hearing?  
 20 MS. VARELA: Yes, she was present.  
 21 COMMISSIONER JOLLEY: And did she have her own  
 22 counsel representative?  
 23 MS. VARELA: No, she came by herself.  
 24 COMMISSIONER KUNASEK: When was this complaint  
 25 filed? Is this from the '04 election cycle?

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1 represented the Commission as well, it doesn't go to a  
 2 vote unless there's a second.  
 3 COMMISSIONER KUNASEK: Okay.  
 4 MS. VARELA: I don't think it says in the  
 5 statute. All it says is that the Commission shall elect  
 6 a Chair and three Commissioners shall constitute a  
 7 quorum with respect to that.  
 8 CHAIRPERSON BUSCHING: I'm happy to continue on  
 9 as Chair if the Commission desires.  
 10 With that, I'll call for the question, all in  
 11 favor of me continuing as Chair for 2006 say, "aye."  
 12 (Chorus of ayes.)  
 13 CHAIRPERSON BUSCHING: Opposed, nay?  
 14 I vote aye. Motion carries.  
 15 Agenda Item VIII, legal report on MUR 04-0043  
 16 for Peggy Toomey Hammann from Assistant Attorney General  
 17 Diana Varela.  
 18 MS. VARELA: Yes. Thank you, Chairman.  
 19 COMMISSIONER KUNASEK: What's MUR? Excuse me.  
 20 MS. VARELA: It's Matter Under Review. It's a  
 21 number assigned by the Commission staff but that's what  
 22 it stands for.  
 23 MR. LANG: For enforcement matters.  
 24 COMMISSIONER KUNASEK: Okay.  
 25 MS. VARELA: Thank you, Madame Chair. There's

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1 MS. VARELA: From the '04 election cycle, yes.  
 2 I don't remember off the top of my head.  
 3 COMMISSIONER KUNASEK: And when was the hearing  
 4 on it?  
 5 MS. VARELA: It was March 28th.  
 6 CHAIRPERSON BUSCHING: Just a couple weeks ago?  
 7 MS. VARELA: About a month ago.  
 8 COMMISSIONER KUNASEK: Month ago.  
 9 CHAIRPERSON BUSCHING: Perhaps for the benefit  
 10 of the people that weren't present throughout the  
 11 process you could just give a little background on this  
 12 situation.  
 13 COMMISSIONER KUNASEK: What did the complaint  
 14 include?  
 15 MS. VARELA: I'm actually thinking about it.  
 16 It's been a long time, a lot of things have happened  
 17 since then. The general allegations were she had  
 18 overspent her general election spending limit and also  
 19 she had received some matching funds towards the end of  
 20 election cycle that she neither -- she neither reported  
 21 receiving those funds and she didn't report how she  
 22 spent them, and there -- if I remember correctly --  
 23 there was a complaint filed against her. But there was  
 24 also -- she was subject to a random audit which is  
 25 another way that enforcement matters can come to the



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1 attention of the Commission. But those were the general  
 2 allegations. And the Commission did try to -- to work  
 3 those issues out with her. We weren't able to do so.  
 4 CHAIRPERSON BUSCHING: Commissioner Jolley?  
 5 COMMISSIONER JOLLEY: Yes, wasn't there also a  
 6 complaint because of her residence? There was a  
 7 question about her residence.  
 8 MS. VARELA: There was a question about her  
 9 residence but we had determined that wasn't something  
 10 that was under the jurisdiction of the Commission so we  
 11 didn't -- and I think that was actually in the reason to  
 12 believe finding but it wasn't anything the Commission  
 13 could pursue, so that wasn't part of the hearing.  
 14 COMMISSIONER KUNASEK: Was the -- was Peggy  
 15 elected?  
 16 MS. VARELA: She was not elected.  
 17 COMMISSIONER KUNASEK: She was not elected.  
 18 MS. VARELA: No. She won her primary so she  
 19 did get general election funds, but she wasn't  
 20 ultimately elected.  
 21 CHAIRPERSON BUSCHING: Okay. So we would  
 22 expect to probably hear about this sometime in May?  
 23 MS. VARELA: Yes. Actually, I would expect to  
 24 hear from Judge Martin probably in the next few weeks.  
 25 If the Commission want to see the recommended

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1 prefer to use to evaluate Mr. Lang, or if somebody wants  
 2 to try to combine them, or if neither version is  
 3 something that the Commissioners want to use.  
 4 And then after we decide what we want to use to  
 5 evaluate him, we'll then -- we'll have each of the  
 6 Commissioners, to the extent that they can, give their  
 7 comments and then we'll have an executive session at a  
 8 future meeting if Mr. Lang prefers -- or an open session  
 9 -- to evaluate his performance.  
 10 Is there anything you would like to add to  
 11 that, Mr. Lang?  
 12 MR. LANG: Thank you, Madam Chair,  
 13 Commissioners. No, these are just ideas to put a  
 14 proposal out there. The theory behind the second  
 15 version is this is a six-month review and not an annual  
 16 review and so it's also a review -- it's more  
 17 appropriate. It's also a review traditionally used with  
 18 attorneys, and managers, and --  
 19 COMMISSIONER KUNASEK: Version two?  
 20 MR. LANG: Yeah. And version one obviously has  
 21 been used by this Commission in the past so, obviously,  
 22 it's appropriate as well. In my experience in  
 23 government, usually the little one to 10 number scores  
 24 are used for support staff who are covered.  
 25 COMMISSIONER KUNASEK: Who are covered?

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1 decision, we can certainly forward it. It will either  
 2 be on the next agenda. There might be a special meeting  
 3 depending on when we get it. There's certain timelines  
 4 on when the Commission needs to take action on the  
 5 administrative law judge's recommended decision.  
 6 COMMISSIONER KUNASEK: Okay.  
 7 CHAIRPERSON BUSCHING: Thank you.  
 8 MS. VARELA: You're welcome.  
 9 CHAIRPERSON BUSCHING: Item No. IX, discussion  
 10 and possible action on process for Executive Director  
 11 review. We started on this, I guess, about a month ago.  
 12 We weren't sure but we think that we told Mr. Lang that  
 13 we would evaluate his performance after he had been here  
 14 about six months. And so what it was is, the same  
 15 agenda item was on the agenda last time, but the meeting  
 16 had gone so long that we agreed to postpone it to this  
 17 time.  
 18 There have been two versions of a performance  
 19 evaluation sent out for the Commissioners'  
 20 consideration. The version number one was a version  
 21 that was used in the past and version number two is a  
 22 version that Mr. Lang had used in similar situations.  
 23 And so we thought we'd have both of these come before  
 24 the Commission for just a general review of whether one  
 25 of these forms is a form that the Commissioners would

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1 MR. LANG: Yeah.  
 2 CHAIRPERSON BUSCHING: How many are covered?  
 3 COMMISSIONER PARKER: Covered personnel rules.  
 4 MR. LANG: We don't have any covered employees  
 5 here. But either one would be fine.  
 6 COMMISSIONER KUNASEK: You would not be  
 7 considered support staff, would you?  
 8 MR. LANG: To you, yes. But, no.  
 9 COMMISSIONER KUNASEK: Well since we're doing  
 10 this for the six-month one, let's take version two if  
 11 we're going to do that.  
 12 CHAIRPERSON BUSCHING: Okay. Is that a motion?  
 13 COMMISSIONER KUNASEK: I would -- pending no  
 14 further discussion.  
 15 CHAIRPERSON BUSCHING: Okay. Is there a  
 16 second?  
 17 COMMISSIONER KUNASEK: I will make the motion  
 18 to adopt version two.  
 19 CHAIRPERSON BUSCHING: Sounds good. Is there a  
 20 second?  
 21 COMMISSIONER SCARAMAZZO: Second.  
 22 CHAIRPERSON BUSCHING: It's been moved by  
 23 Commissioner Kunasek and second by Commissioner  
 24 Scaramazzo that we adopt version two. Any further  
 25 discussion?

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1 If not, the Chair will call for the question,  
 2 all in favor say, "aye."  
 3 (Chorus of ayes.)  
 4 CHAIRPERSON BUSCHING: Opposed, nay?  
 5 Chair votes aye. Motion carries.  
 6 So now we have to figure out who will receive  
 7 these and put together a sort of mini report. Are there  
 8 any volunteers?  
 9 COMMISSIONER KUNASEK: By "who," you mean  
 10 members of the Commission?  
 11 CHAIRPERSON BUSCHING: A member -- historically  
 12 what we have done is have a member of the Commission  
 13 sort of act as the person to gather the evaluations and  
 14 sort of consolidate them to be able to make a report to  
 15 the Commission and to the Executive Director.  
 16 If -- is that appropriate, Mr. Lang, or do you  
 17 have any other suggestions?  
 18 MS. VARELA: I don't -- I don't want to say  
 19 definitively, but I don't know if it is. You can't have  
 20 communications with the other Commissioners outside the  
 21 meeting. Even though what you will say can be discussed  
 22 in executive session, you might technically be having an  
 23 executive session meeting by getting all their comments.  
 24 Our office tends to take a pretty conservative view on  
 25 what constitutes communications between members of a

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1 commission.  
 2 So, let me -- let me talk to some people in my  
 3 office and I can let you know, first of all, if that is  
 4 okay. My sense kind of right now is it may not be.  
 5 And, secondly, what will be an appropriate way for you  
 6 to --  
 7 CHAIRPERSON BUSCHING: Okay.  
 8 COMMISSIONER KUNASEK: Let me ask, since the  
 9 communication that, I think, the chairperson has  
 10 requested would only be a communication between two  
 11 parties, that means the one Commissioner and the  
 12 Chairman, that could hardly be stretched as a violation  
 13 of the open meeting law.  
 14 MS. VARELA: Well, I don't want to debate the  
 15 legal question outside of an executive session but that  
 16 would be my recommendation.  
 17 COMMISSIONER KUNASEK: If I were to send mine  
 18 to Commissioner Jolley or Commissioner Parker for their,  
 19 you know, acquiescence or whatever, then I think we  
 20 create a problem. But I think for each of us  
 21 individually to send our thoughts to the Chairman or  
 22 designated person, is not a violation of the open  
 23 meeting law.  
 24 MS. VARELA: Okay. I mean, like I said, I  
 25 wouldn't want to debate that question outside of an

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1 executive session, so --  
 2 CHAIRPERSON BUSCHING: Commissioner Jolley?  
 3 COMMISSIONER JOLLEY: Well, maybe perhaps we  
 4 can write thoughts or recommendations and meet in an  
 5 executive session at the next meeting and do it all  
 6 verbally; is that okay?  
 7 CHAIRPERSON BUSCHING: Why don't we -- that may  
 8 be okay. Why don't we get information from Attorney  
 9 General Varela and based upon that Mr. Lang can inform  
 10 us as to what should be done.  
 11 MR. LANG: It seems to me that regardless of  
 12 that issue, you can appoint sort of a point person or  
 13 designate as you said --  
 14 CHAIRPERSON BUSCHING: Doesn't sound like it  
 15 though.  
 16 MR. LANG: -- to start putting together the  
 17 evaluation.  
 18 CHAIRPERSON BUSCHING: I think that we should  
 19 have each person evaluated -- fill out the evaluation  
 20 and hold on to them until we find out what needs to be  
 21 done with them.  
 22 COMMISSIONER KUNASEK: I think what you're  
 23 pointing to get is whoever the designated person, when  
 24 you get all the evaluations, three people said yes on  
 25 this and two people said no, and you can compile a

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1 scorecard I guess.  
 2 MR. LANG: I didn't want to go there because of  
 3 her concerns.  
 4 COMMISSIONER KUNASEK: But if you did it --  
 5 MR. LANG: Well, absolutely. You're right.  
 6 MS. VARELA: That's right.  
 7 CHAIRPERSON BUSCHING: Commissioner Jolley?  
 8 COMMISSIONER JOLLEY: Do we have a motion on  
 9 the floor right now?  
 10 COMMISSIONER PARKER: Our motion is to accept  
 11 number two.  
 12 MS. VARELA: I think that was already voted on.  
 13 So there is no motion now.  
 14 CHAIRPERSON BUSCHING: Yeah, okay.  
 15 COMMISSIONER KUNASEK: So the process then  
 16 would be take it up in executive session at the next  
 17 regular meeting?  
 18 CHAIRPERSON BUSCHING: Uh-huh. Unless we hear  
 19 something from either Mr. Lang or Ms. Varela beforehand.  
 20 MS. VARELA: And there's also specific rules on  
 21 personnel evaluations. Todd has the option of having it  
 22 in open session. But subject to all of those rules, if  
 23 you want it on the next agenda, we will get the answers  
 24 for you.  
 25 CHAIRPERSON BUSCHING: Okay. All right. We're

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1 down to Agenda Item X, call for public comment. This is  
 2 the time for consideration and discussion of comments  
 3 and complaints from the public. Action taken as a  
 4 result of public comment will be limited to directing  
 5 staff to study the matter or rescheduling the matter for  
 6 further consideration or decision at a later date or  
 7 responding to criticism.

8 Is there anyone from the public here that  
 9 wishes to speak? No one.

10 Okay. We're at adjournment. Is there a  
 11 motion?

12 COMMISSIONER JOLLEY: I'll make that motion to  
 13 adjourn.

14 COMMISSIONER KUNASEK: Second.

15 CHAIRPERSON BUSCHING: It's been moved and  
 16 seconded that we adjourn. All in favor say, "aye."

17 (Chorus of ayes.)

18 CHAIRPERSON BUSCHING: Opposed, nay?

19 Chair votes aye. Motion carries.

20  
 21 (Whereupon the proceeding concludes at 10:18  
 22 a.m.)

23  
 24  
 25

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# 1 C E R T I F I C A T E

2  
 3 I, Angela Furniss Miller, Certified Reporter,  
 4 do hereby certify that the foregoing pages numbered 1  
 5 through 38, inclusive, constitute a full and accurate  
 6 printed record of my stenographic notes taken at said  
 7 time and place, all done to the best of my skill and  
 8 ability.

9 DATED, at Phoenix, this 1st day of May, 2006.

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Angela Furniss Miller, RPR  
 Certified Reporter (AZ50127)

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